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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1502 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

MANIAR RAJANI AND COMPANY

Versus

COMPETNET AUTHORITY & DEPUTY COLLECTOR (ULC),
RAJKOT & ANR.

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 13/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at

Rajkot (respondent No. 1 herein) on 14th February 1986 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 1st November 1988 in Appeal No. Rajkot-25 of 1986 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the petitioner to be in excess of the ceiling limit by 18734 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed its declaration in the prescribed form under sec. 6(1) of the Act with respect to its holding of one parcel of land bearing survey No. 101 admeasuring 20234 square meters situated at Nana Mauva within the urban agglomeration of Rajkot (the disputed land for convenience). It appears that the petitioner had obtained permission under sec. 21(1) of the Act with respect to an area of 12419.69 square meters (the scheme land for convenience) from the disputed land on certain terms and conditions. It appears that that permission came to be cancelled by the order passed on 4th October 1982 on account of breach of certain conditions thereof. It appears that the aforesaid order passed on 4th October 1982 came to be affirmed in appeal by the order passed by the appellate authority on 30th November 1985. Thereafter respondent No. 1 processed the aforesaid declaration filed by the petitioner. After observing necessary formalities under sec. 8 of the Act, by his order passed on 14th February 1986 under sec. 8(4) thereof, respondent No. 1 declared the holding of the petitioner to be in excess of the ceiling limit by 18734 square meters. He further ordered vesting of an area of 7814.31 square meters out of the surplus land in the State Government without payment of any compensation therefor. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-25 of 1986. By the order passed on 1st November 1988 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure B to this petition. It appears that, pursuant thereto, the final statement under sec. 9 of the Act was prepared and the necessary notification under sec. 10(3) thereunder was published on 5th January 1989. Thereafter the notice under sec. 10(5) of the Act was issued on 16th January 1989. Its copy is at Annexure C to this petition. The aggrieved petitioner has thereafter invoked the extra-ordinary jurisdiction of this Court under art. 226 of the

Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition and has also questioned the legality and validity of the notice at Annexure C to this petition.

3. It transpires from the material on record that the scheme with respect to the scheme land was cancelled by the order passed by respondent No. 1 on 4th October 1982 and it was affirmed in appeal by the appellate order passed by respondent No. 2 on 30th November 1985. It appears that the aforesaid orders of 4th October 1982 and 30th November 1985 were challenged before this Court by means of Special Civil Application No. 1370 of 1986. That writ petition was heard along with several other petitions and by one common judgment pronounced in all these writ petitions on 24th February 1994 inter alia in the writ petition filed by the present petitioner was accepted and the aforesaid orders passed by respondents Nos. 1 and 2 cancelling the scheme for the scheme land under sec. 21(2) of the Act were set aside. The petitioner inter alia was granted permission to carry on construction activity in accordance with the scheme sanctioned and to complete it within the stipulated time-limit as indicated in the judgment. In that view of the matter, the scheme land will have to be excluded from the holding of the petitioner.

4. The total holding of the petitioner is found to be 20234 square meters. The scheme land is to the tune of 12419.69 square meters. That would leave an area of 7814.31 square meters in the holding of the petitioner. The permissible ceiling limit prescribed for the urban agglomeration of Rajkot is 1500 square meters. That would render 6314.31 square meters as excess land in the holding of the petitioner.

5. It is strange and surprising that respondent No. 1 has declared that the area of land to the tune of 7814.31 square meters would vest in the State Government without payment of any compensation even under the Act. It appears that, in the objections to the draft statement, it was contended by and on behalf of the petitioner that the said area was used for public purposes and was used as road. Learned Advocate Shri Nanavaty for the petitioner is right in his submission that such contention was advanced for the purpose of showing that the construction on the said area of land was not permitted and it could not have therefore been declared as vacant land for the purposes of the Act. Simply because the petitioner has chosen to style that

area of land as used for public purpose or as road is no ground to vest it in the State Government without payment of any compensation. That direction contained in the impugned order at Annexure A to this petition deserves to be quashed.

6. In view of my aforesaid discussion, the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition cannot be sustained in law in toto. The area declared surplus thereunder deserves to be modified from 18734 square meters to 6314.31 square meters. The direction contained in the impugned order at Annexure A to this petition to the effect that the excess land to the tune of 7814.31 square meters would vest in the State Government without payment of compensation deserves to be quashed and set aside. Consequently, all actions/notifications/notices issued pursuant to the orders at Annexures A and B to this petition including the notice at Annexure C to this petition also deserve to be quashed and set aside. The matter has to be remanded to respondent No. 1 for restoration of the proceeding to file and for preparation of the final statement under sec. 9 of the Act in the light of this judgment of mine after giving an opportunity to the petitioner for selection of the land to be surrendered as surplus.

7. In the result, this petition is accepted to the aforesaid extent. The area declared surplus under the order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 14th February 1986 under sec. 8(4) of the Act at Annexure A to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 1st November 1988 in Appeal No. Rajkot-25 of 1986 at Annexure B to this petition is substituted by 6314.31 square meters in the place of 18734 square meters. The direction that the surplus land to the tune of 7814.31 square meters would vest in the State Government free from all encumbrances is quashed and set aside. Consequently, all actions/notifications/notices pursuant to the impugned orders at Annexures A and B to this petition are also quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for preparation of the final statement under sec. 9 of the Act in the light of this judgment of mine after giving an opportunity to the petitioner for selection of the land to be surrendered as surplus. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
